

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID VINCENT CARSON,
CDCR #J-19886,

Plaintiff,

vs.

F. MARTINEZ, et al.

Defendants.

Case No.: 3:16-cv-1736-JLS-BLM

**ORDER: (1) GRANTING MOTION
TO PROCEED IN FORMA
PAUPERIS PURSUANT TO 28 U.S.C.
§ 1915(a),
(2) DISMISSING DEFENDANTS
PURSUANT TO 28 U.S.C. §§
1915(e)(2) AND 1915A(b), AND
(3) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE UPON
REMAINING DEFENDANTS
PURSUANT TO 28 U.S.C. § 1915(d)
AND FED. R. CIV. P. 4(c)(3)**

(ECF Nos. 1, 2)

Plaintiff David Vincent Carson, currently incarcerated at the Correctional Training Facility located in Soledad, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (Compl., ECF No. 1), together with a Motion to Proceed *In Forma Pauperis* (IFP) (IFP Mot., ECF No. 2). Plaintiff claims fourteen named and unidentified correctional, medical, and inmate appeals officials at Richard J. Donovan Correctional Facility (RJD) violated his First, Eighth, and Fourteenth Amendment rights while he was incarcerated there in 2013 and 2014. (*See* Compl. At 4–13, ECF No. 1.)

IFP MOTION

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400.¹ *See* 28 U.S.C. § 1914(a). An action may proceed despite the plaintiff's failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a prisoner and he is granted leave to proceed IFP, he nevertheless remains obligated to pay the entire fee in "increments," *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately dismissed, *see* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (PLRA), a prisoner seeking leave to proceed IFP must also submit a "certified copy of the trust fund account statement (or institutional equivalent) for . . . the six-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses an initial payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the average monthly balance in the account for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); *Taylor*, 281 F.3d at 850. The institution having custody of the prisoner then collects subsequent payments, assessed at 20% of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and forwards them to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

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¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
 2 account statement pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. *Andrews*,
 3 398 F.3d at 1119. These statements show that Plaintiff has an available balance of \$0.01
 4 at the time of filing. (*See* ECF No. 2 at 8.) Therefore, the Court assesses no initial partial
 5 filing fee pursuant to 28 U.S.C. § 1915(b)(1) because it appears Plaintiff is unable to pay
 6 any initial fee. *See* 28 U.S.C. § 1915(b)(4) (“In no event shall a prisoner be prohibited
 7 from bringing a civil action or appealing a civil action or criminal judgment for the reason
 8 that the prisoner has no assets and no means by which to pay the initial partial filing fee.”);
 9 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts
 10 as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure
 11 to pay . . . due to the lack of funds available to him when payment is ordered.”.)

12 Accordingly, the Court **GRANTS** Plaintiff’s IFP Motion (ECF No. 2), declines to
 13 “exact” any initial filing fee because his trust account statement shows he “has no means
 14 to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the California Department
 15 of Corrections and Rehabilitation (CDCR) to collect the entire \$350 balance of the filing
 16 fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to
 17 the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1), *see id.*

18 **INITIAL SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) AND 1915A**

19 **I. Legal Standard**

20 Notwithstanding Plaintiff’s IFP status or the payment of any partial filing fees, the
 21 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
 22 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused
 23 of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or
 24 the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
 25 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2), (h) and 1915A(a).
 26 Under these provisions of the PLRA, the Court must *sua sponte* dismiss complaints, or any
 27 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek
 28 damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b);

1 *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. §
2 1915A(b)); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (discussing
3 § 1915(e)(2)) (en banc).

4 All complaints must contain “a short and plain statement of the claim showing that
5 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
6 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
7 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
8 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a
9 complaint states a plausible claim for relief [is] . . . a context-specific task that requires the
10 reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
11 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
12 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

13 “When there are well-pleaded factual allegations, a court should assume their
14 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
15 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
16 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
17 allegations of material fact and must construe those facts in the light most favorable to the
18 plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (“The language of
19 § 1915(e)(2)(B)(ii) parallels the language of Federal Rule of Civil Procedure 12(b)(6).”).

20 However, while the court has an “obligation . . . , where the petitioner is *pro se*,
21 particularly in civil rights cases, to construe the pleadings liberally and to afford the
22 petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
23 2010) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc))
24 (internal quotation marks omitted), it may not “supply essential elements of the claim that
25 were not initially pled,” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
26 Cir. 1982).

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1 II. Analysis

2 A. *Respondeat Superior*

3 Plaintiff names as a Defendant “J. Lewis,” who is identified as the “Deputy Director
4 in charge of CDC Health Care Policy and Risk Management.” (Compl. 3, ECF No. 1.)
5 Plaintiff alleges that Defendant Lewis violated his Eighth Amendment rights due to his
6 alleged “failure to adequately train and supervise medical staff who administer diagnosis
7 and treatment of Plaintiff’s serious medical needs.” (*Id.* at 16.) Plaintiff’s Complaint,
8 however, contains no “factual content” describing Lewis’ direct involvement in Plaintiff’s
9 medical care which would “allow[] the court to draw the reasonable inference that the
10 [Deputy Director] is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

11 “All § 1983 claims must be premised on a constitutional violation.” *Nurre v.*
12 *Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009). To state a claim, Plaintiff must
13 demonstrate that each defendant personally participated in the deprivation of his
14 constitutional rights. *Iqbal*, 556 U.S. at 673; *Colwell v. Bannister*, 763 F.3d 1060, 1070
15 (9th Cir. 2014). Liability may not be imposed on supervisory personnel for the acts or
16 omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at
17 672–73; *Jones*, 297 F.3d at 934. Instead, supervisors may be held liable only if they
18 “participated in or directed the violations, or knew of the violations and failed to act to
19 prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *accord Starr v. Baca*,
20 625 F.3d 1202, 1205–06 (9th Cir. 2011).

21 Because Plaintiff fails to allege any “factual matter” to suggest how or to what extent
22 Defendant Lewis personally participated in Plaintiff’s medical diagnosis or treatment, the
23 basis of his alleged inadequate medical care claim, his Complaint “fails to state a claim to
24 relief that is plausible on its face,” *Iqbal*, 556 U.S. at 678; *Taylor*, 880 F.2d at 1045, and
25 his claims against Defendant Lewis must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)
26 and 1915A(b).

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1 **B. Grievance Procedures**

2 Plaintiff seeks to hold Defendants Olson and Ramirez liable for alleged due process
3 violations for the manner in which they responded to his administrative grievances. (*See*
4 Compl. 14–15, ECF No. 1.) While the Fourteenth Amendment provides that “[n]o state
5 shall . . . deprive any person of life, liberty, or property, without due process of law,” U.S.
6 Const. amend. XIV, § 1, “[t]he requirements of procedural due process apply only to the
7 deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty
8 and property,” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569 (1972). State
9 statutes and prison regulations may grant prisoners liberty or property interests sufficient
10 to invoke due process protection. *Meachum v. Fano*, 427 U.S. 215, 223–27 (1976). To
11 state a procedural due process claim, however, Plaintiff must allege: “(1) a liberty or
12 property interest protected by the Constitution; (2) a deprivation of the interest by the
13 government; [and] (3) lack of process.” *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir.
14 2000).

15 The Ninth Circuit has held that inmates have no protected property interest in an
16 inmate grievance procedure arising directly from the Due Process Clause. *See Ramirez v.*
17 *Galaza*, 334 F.3d 850, 869 (9th Cir. 2003) (“[I]nmates lack a separate constitutional
18 entitlement to a specific prison grievance procedure.”) (citing *Mann v. Adams*, 855 F.2d
19 639, 640 (9th Cir. 1988) (finding that the due process clause of the Fourteenth Amendment
20 creates “no legitimate claim of entitlement to a [prison] grievance procedure”)). Even the
21 non-existence of, or the failure of prison officials to properly implement, an administrative
22 appeals process within the prison system does not raise constitutional concerns. *Mann*,
23 855 F.2d at 640; *see also Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

24 In addition, Plaintiff has failed to plead facts sufficient to show that Defendant Olson
25 or Ramirez deprived him of a protected liberty interest by allegedly failing to respond to
26 any particular prison grievance in a satisfactory manner. While a liberty interest can arise
27 from state law or prison regulations, *Meachum*, 427 U.S. at 223–27, due process
28 protections are implicated only if Plaintiff alleges facts to show that Defendants:

(1) restrained his freedom in a manner not expected from his sentence, and (2) “impose[d] atypical and significant hardship on [him] in relation to the ordinary incidents of prison life,” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Here, Plaintiff pleads no facts to suggest how Defendants’ allegedly inadequate review or failure to consider inmate grievances restrained his freedom in any way, or subjected him to any “atypical” and “significant hardship.” *Id.* at 483–84.

Accordingly, Plaintiff’s claims against Olson and Ramirez must be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b).

C. Named Defendants

As to the remaining Defendants, the Court finds Plaintiff’s Complaint contains claims sufficient to survive the “low threshold” for proceeding past the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012).

Accordingly, the Court will direct the U.S. Marshal to effect service upon the named Defendants on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (“[T]he court may order that service be made by a United States marshal or deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).

CONCLUSION

Good cause appearing, the Court:

1. **GRANTS** Plaintiff’s IFP Motion (ECF No. 2);
2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing monthly payments from his account in an amount equal to twenty percent (20%) of the preceding month’s income and forwarding those payments to the Clerk of the Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION;**

1 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
2 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

3 4. **DISMISSES** Defendants Olson, Ramirez and Lewis based on Plaintiff's
4 failure to state a claim against them pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b);

5 5. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF No.
6 1) upon the remaining named Defendants and forward it to Plaintiff along with a blank
7 U.S. Marshal Form 285 for each of these named Defendants. In addition, the Clerk will
8 provide Plaintiff with a certified copy of this Order, a certified copy of his Complaint, and
9 the summons so that he may serve these Defendants. Upon receipt of this "IFP Package,"
10 Plaintiff must complete the Form 285s as completely and accurately as possible, and return
11 them to the United States Marshal according to the instructions the Clerk provides in the
12 letter accompanying his IFP package;

13 6. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
14 upon the named Defendants as directed by Plaintiff on the USM Form 285s provided to
15 him. All costs of that service will be advanced by the United States. *See* 28 U.S.C.
16 § 1915(d); Fed. R. Civ. P. 4(c)(3);

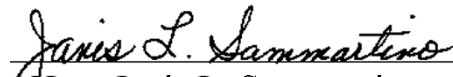
17 7. **ORDERS** the named and served Defendants to reply to Plaintiff's Complaint
18 within the time provided by the applicable provisions of Federal Rule of Civil Procedure
19 12(a). *See* 42 U.S.C. § 1997e(g)(2) (noting that while a defendant may occasionally be
20 permitted to "waive the right to reply to any action brought by a prisoner confined in any
21 jail, prison, or other correctional facility under section 1983," once the Court has conducted
22 its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has
23 made a preliminary determination based on the face on the pleading alone that Plaintiff has
24 a "reasonable opportunity to prevail on the merits," the defendant is required to respond);
25 and

26 8. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
27 serve upon the named Defendants, or, if appearance has been entered by counsel, upon
28 Defendants' counsel, a copy of every further pleading, motion, or other document

1 submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must
2 include with every original document he seeks to file with the Clerk of the Court, a
3 certificate stating the manner in which a true and correct copy of that document has been
4 was served on Defendants or their counsel, and the date of that service. *See* Civ. L.R. 5.2.
5 Any document received by the Court which has not been properly filed with the Clerk or
6 which fails to include a Certificate of Service upon Defendants may be disregarded.

7 **IT IS SO ORDERED.**

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9 Dated: August 15, 2016

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11 Hon. Janis L. Sammartino
12 United States District Judge
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